

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PETER F. KRABACH and JOANNA M.  
KRABACH,

UNPUBLISHED  
February 1, 2007

Plaintiffs-Appellants,

v

FRANK STANZIONE,

No. 260437  
Oakland Circuit Court  
LC No. 97-545427-CH

Defendant-Appellee.

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Before: Donofrio, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal by delayed leave granted the circuit court's order denying their request for a permanent injunction in this dispute involving riparian rights and the scope of an easement. Plaintiffs also challenge the trial court's order granting defendant's request for attorney fees and costs. We affirm in part and vacate in part the trial court's order denying plaintiffs' request for a permanent injunction, and remand for further proceedings. Further, we reverse the trial court's award of sanctions.

**I. Basic Facts And Procedure**

The dispute in this case involves the Brendel Heights subdivision in White Lake, Michigan. Plaintiffs filed their complaint against defendant in 1997. At the time, they owned lots 232 and 233, and defendant owned lots 229, 230, and 231. Lot 232 abuts lot 231. All three of defendant's lots abut the lake. The lake turns in an easterly direction near the end of lot 231. A private road for lot owners' use runs along plaintiffs' lots. The road extends to the end of lot 232. In 1921, when the subdivision was platted, the private road ended at the edge of Brendel Lake. Over the years, the lake has receded such that it does not regularly reach the end of the private road.

In their complaint alleging trespass, plaintiffs maintained that defendant erected a fence blocking the private road and obstructing ingress and egress to and from the lake. Plaintiffs sought in part an injunction directing defendant to remove the fence and permanently enjoining him from obstructing the private road.

After a bench trial, the trial court entered a permanent injunction, enjoining defendant "from taking any action that interferes with the subject private road and its use and enjoyment by

the Plaintiffs and other lot owners for access to the waters of Brendel Lake.” The trial court found that the 1921 subdivision plat provides for a private road for use of lot owners only. The trial court determined that the original developer intended the private road for lake access and that defendant’s fence prevented such access. The trial court further determined that the private road had not been abandoned and that defendant had no right to interfere with the rights of plaintiffs or other lot owners to use the road to access the lake.

In 2004, plaintiffs filed an amended petition for an order to show cause why defendant should not be held in contempt for violating the 1998 injunction. Plaintiffs alleged that defendant destroyed personal property; erected a fishing shanty across the beach on the easement; and that defendant placed a dock across the easement to stop subdivision members from using the lake. Defendant contended that, at the time of the original plat, his property at the end of the private road was under water. Since that time, however, the waters of the lake had receded to expose a 30-foot wide strip of defendant’s land that runs from the end of the private road to the present edge of the lake. Defendant also contended that plaintiffs and other lot owners would exceed the scope of the easement under the court’s 1998 ruling by placing structures on defendant’s land and constructing and maintaining a dock. Defendant denied blocking lot owners’ access to the lake or destroying their property and requested the court to order that all structures be removed from his property.

In October, 2004, the trial court issued an opinion and order determining that plaintiffs are not riparian owners. The trial court reasoned in part that the property is dry for most of the year, the plat shows that the property has no lake frontage, and the property is not bounded by a natural body of water. The trial court further determined that the language of the easement plainly and unambiguously provides “for access to the waters of Brendel Lake.” The court stated that, as a matter of law, an easement given to back-lot owners for access to a lake does not give rise to the right to build a dock or moor boats. The court determined that plaintiffs’ purported uses of the easement were beyond its scope.

On November 1, 2004, plaintiffs filed a claim of appeal in this Court, seeking to appeal the trial court’s order. This Court dismissed the appeal for lack of jurisdiction because the order is a post-judgment order. On November 12, 2004, defendant filed in the trial court a motion for costs and attorney fees, arguing that plaintiffs’ filing of the contempt proceedings was frivolous within the meaning of MCL 600.2591 and that their claim that they may properly place structures on defendant’s land was without merit and already implicitly addressed in the court’s 1998 ruling. Defendant requested that the court award him \$3,300 in attorney fees.

In response to defendant’s motion, plaintiffs argued that defendant’s motion was untimely because it was not filed within 14 days of the date of the order. Plaintiffs also argued that attorney fees and costs are not justified under MCR 2.114 because the trial court’s 1998 order did not define the scope of the easement and that prior access included the construction and use of a dock and the mooring of boats. Plaintiffs also contended that their attorney could not have been aware of this Court’s decision in *Dyball v Lennox*, 260 Mich App 698; 680 NW2d 522 (2004), on which the trial court relied, at the time that counsel filed the petition because that case had not yet been decided. Plaintiffs argued that, in any event, *Dyball* is distinguishable from the instant case.

The trial court granted defendant's motion. The court reasoned that plaintiffs' claim was frivolous within the meaning of MCL 600.2591(3)(a) because the language of the easement is plain and unambiguous and provides "for access to the waters of Brendel Lake." The court stated that plaintiffs' uses were clearly beyond the scope of the easement. Likewise, the court stated that plaintiffs' claims were devoid of arguable legal merit. The court entered a judgment against plaintiffs for \$3,300.

Plaintiffs moved for reconsideration arguing, among other things, that other lot owners, rather than themselves, placed the dock on the easement. Plaintiffs also argued that the trial court's order improperly assessed sanctions against Peter because Joanna and Peter divorced in 2002, and all interest in the property was quitclaimed to Joanna only. Thus, plaintiffs contended that Peter has no interest in the property and did not initiate the petition against defendant. The trial court denied plaintiffs' motion. Plaintiffs filed a delayed application for leave to appeal, which this Court granted.

## II. Analysis

Plaintiffs first argue that the trial court improperly determined that they are not riparian owners according to the subdivision plat. This Court reviews a trial court's findings of fact for clear error and its conclusions of law de novo. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004). A finding of fact is clearly erroneous when, although some evidence supports the finding, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

Riparian land includes or is bounded by a natural watercourse. *Thies v Howland*, 424 Mich 282, 287-288; 380 NW2d 463 (1985); *Little v Kin*, 249 Mich App 502, 508; 644 NW2d 375 (2002) (*Little I*), *aff'd* 468 Mich 699 (2003). An indispensable requisite to the riparian doctrine is the land's actual contact with the water. *Id.* at 507-508. Persons owning riparian land or having a possessory interest in such land enjoy exclusive rights, including the right to erect and maintain docks along the shoreline. *Thies, supra* at 288.

Plaintiffs' property does not abut the lake according to the plat, which shows that the boundaries of their property do not follow the meander line of the lake. Thus, the trial court's finding that plaintiffs are not riparian owners is not clearly erroneous.

Plaintiffs incorrectly argue that the trial court focused exclusively on whether their lot currently fronts the lake and ignored the plat. To the contrary, the trial court opined that the plat itself showed that plaintiffs have no lake frontage. Although the trial court considered the testimony of plaintiff Joanna Krabach regarding whether her property touches the lake on a year-round basis, the court did not ignore the plat and in fact relied on the plat in concluding that plaintiffs' property does not abut the lake.

Plaintiffs next argue that the trial court erred by determining that the easement language is unambiguous. The scope of our review is explained in *Dyball*:

[T]he rights of nonriparian owners should be determined by examining the language of the easement and the circumstances existing at the time of the grant. In *Little v Kin*, 468 Mich 699; 664 NW2d 749 (2003) (*Little II*), our Supreme

Court affirmed *Little I, supra*, but noted that when the language of the easement grant is plain and unambiguous, a directive to consider circumstances existing at the time of the grant was inconsistent with well-established principles of legal interpretation. *Little II, supra* at 700 n 2. The Supreme Court provided that “[w]here the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted.” *Id.* at 700, citing *Gawrylak v Cowie*, 350 Mich 679, 683; 86 NW2d 809 (1957). In addition, our Supreme Court provided “[i]f the text of the easement is ambiguous, extrinsic evidence may be considered by the trial court in order to determine the scope of the easement.” *Little II, supra*. [Dyball at 703-704.]

Thus, we must first examine whether the text of the easement in this case is ambiguous. *Id.* at 704.

The parties appear to disagree on what constitutes the scope of the easement in this case. Plaintiffs focus on the language in the plat indicating that the private road is “for use of lot owners only,” but defendant argues that the trial court previously interpreted this language in 1998, and determined the easement was meant for access to Brendel Lake. In *Little v Hirschman*, 469 Mich 553, 559-562; 677 NW2d 319 (2004), our Supreme Court recognized that a dedication of land for private use in a recorded plat grants lot owners an irrevocable easement or right to use the dedicated land. Thus, the easement is not created by the trial court’s 1998 ruling. Rather, the easement was conferred in the plat. The trial court erred to the extent that it interpreted its previous ruling as the easement. Accordingly, we must look to the plat language to determine whether it is ambiguous rather than to the language used in the trial court’s 1998 ruling.

In *Higgins Lake Prop Owners Ass’n v Gerrish Twp*, 255 Mich App 83, 88-89; 662 NW2d 387 (2003), this Court looked to plat language to determine the scope of plat dedications that dedicated subdivision streets and alleys “to the use of the public.” That case involved the public’s right to use the ends of roads terminating at the edge of Higgins Lake in several subdivisions surrounding the lake. *Id.* at 88. The plaintiffs sought to enjoin persons from sunbathing, picnicking, mooring boats, and placing boat hoists at the road ends on the basis that these uses were beyond the scope of the dedications. *Id.* at 88, 92.

This Court opined that “[t]he use of the terms ‘streets’ and ‘alleys’ implies passage, and public roads that terminate at the edge of navigable waters are presumed to provide public access to the water.” *Id.* at 102. This Court also stated that the burden rested with the defendants “to establish that anything other than mere access to the lake was intended,” and concluded that the defendants failed to meet this burden. *Id.* at 102-103. This Court rejected the defendants’ reliance on *Dobie v Morrison*, 227 Mich App 536; 575 NW2d 817 (1998), to support their argument that the historical uses of the road ends are relevant to determine the scopes of the dedications. *Higgins Lake Prop Owners Ass’n, supra* at 103. This Court acknowledged its previous statement in *Dobie* that “[t]he intent of the plat-tors should be determined with reference to the language used in connection with the facts and circumstances *existing at the time of the grant.*” *Id.* (emphasis in original), quoting *Dobie, supra* at 540, citing *Thies, supra* at 293. Thus, this Court concluded, “in the absence of evidence that the historical uses of the road ends were contemporaneous with the dedication, the road-end activity occurring *after* the dedication [is] not helpful in determining the dedicators’ intent.” *Id.* (emphasis in original).

Here, it is undisputed that the language in the plat concerning the private road states, “private road for use of lot owners only.” Although this dedication language grants to lot owners “the use” of the road, it is silent regarding the parameters of such use, and it is therefore appropriate to consider the circumstances surrounding the grant of the easement to determine its scope in accord with the dedicator’s intent. *Dyball, supra* at 703-704. The record is insufficient in this regard.

We therefore vacate the portion of the trial court’s order determining plaintiffs’ rights under the easement and remand this case for consideration of the circumstances surrounding the grant of the easement to determine its scope. As recognized in *Higgins Lake Prop Owners Ass’n, supra* at 103, only those historical uses of the road end contemporaneous with the dedication in 1921 are relevant to determining the dedicator’s intent, and activity occurring at the road end after the dedication is not helpful in determining such intent. Thus, the evidence on remand should be limited in this respect.

Plaintiffs next argue that the trial court erred by awarding defendant attorney fees and costs on the basis that their claim was frivolous. This Court reviews for clear error a trial court’s award of sanctions for filing a frivolous action. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002).

Costs and fees are properly awarded under MCL 600.2591(1) only to a “prevailing party.” A prevailing party is “a party who wins on the entire record.” MCL 600.2591(3)(b). Because we remand this case for further proceedings, defendant is not a prevailing party under MCL 600.2591(3)(b). Therefore, we reverse the trial court’s order awarding costs and attorney fees. We need not address plaintiffs’ remaining arguments regarding the sanctions award.

We affirm in part and vacate in part the trial court’s order denying plaintiffs’ request for a permanent injunction and remand for further proceedings consistent with this opinion. The trial court’s order awarding costs and attorney fees is reversed. We do not retain jurisdiction.

/s/ Pat M. Donofrio  
/s/ Richard A. Bandstra  
/s/ Brian K. Zahra